

SHANNON L. GUSTAFSON CA State Bar No. 228856
Deputy County Counsel
MICHELLE D. BLAKEMORE CA State Bar No. 110474
County Counsel
385 North Arrowhead Avenue, Fourth Floor
San Bernardino, California 92415-0140
Telephone: (909) 387-4772
Facsimile: (909) 387-4069
E-Mail: Shannon.Gustafson@cc.sbccounty.gov

Attorneys for Defendants County of San Bernardino and Sgt. Gary Wheeler

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JASON SHELTON,
Plaintiff,
v.

Case No. 5:18-cv-02167 SP

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Honorable Magistrate Judge Sheri Pym

COUNTY OF SAN BERNARDINO;
SERGEANT GARY WHEELER;
DEPUTY DOE 1; DEPUTY DOE 2;
and DOES 1 through 100, inclusive
Defendants.

1

PROTECTIVE ORDER

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1. A. PURPOSES AND LIMITATIONS

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Discovery in this action is likely to involve production of confidential, proprietary,
5 or private information for which special protection from public disclosure and from use
6 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
7 parties hereby stipulate to and petition the Court to enter the following Stipulated
8 Protective Order. The parties acknowledge that this Order does not confer blanket
9 protections on all disclosures or responses to discovery and that the protection it affords
10 from public disclosure and use extends only to the limited information or items that are
11 entitled to confidential treatment under the applicable legal principles. The parties
12 further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
13 Order does not entitle them to file confidential information under seal; Civil Local Rule
14 79-5 sets forth the procedures that must be followed and the standards that will be
15 applied when a party seeks permission from the court to file material under seal.

16

17 B. GOOD CAUSE STATEMENT

18 This action is likely to involve the production of peace officer personnel materials,
19 including but not limited to citizen complaints and internal affairs investigation matters,
20 for which special protection from public disclosure and from use for any purpose other
21 than prosecution of this action is warranted. Such confidential and proprietary materials
22 and information consist of, among other things, information otherwise generally
23 unavailable to the public, or which may be privileged or otherwise protected from
24 disclosure under state or federal statutes, court rules, case decisions, or common law.
25 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
26 disputes over confidentiality of discovery materials, to adequately protect information
27 the parties are entitled to keep confidential, to ensure that the parties are permitted
28 reasonable necessary uses of such material in preparation for and in the conduct of trial,

1 to address their handling at the end of the litigation, and serve the ends of justice, a
2 protective order for such information is justified in this matter. It is the intent of the
3 parties that information will not be designated as confidential for tactical reasons and
4 that nothing be so designated without a good faith belief that it has been maintained in a
5 confidential, non-public manner, and there is good cause why it should not be part of the
6 public record of this case.

7

8 **2. DEFINITIONS**

9 2.1 Action: This pending federal lawsuit, *Shelton v. County of San Bernardino*, 5:18-cv-
10 02167 SP.

11 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
14 generated, stored or maintained) or tangible things that qualify for protection under
15 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
16 Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
18 staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or items that it
20 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

21 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
22 or manner in which it is generated, stored, or maintained (including, among other things,
23 testimony, transcripts, and tangible things), that are produced or generated in disclosures
24 or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
26 the litigation who has been retained by a Party or its counsel to serve as an expert
27 witness or as a consultant in this Action.

28 2.8 House Counsel: attorneys who are employees of a party to this Action. House

1 Counsel does not include Outside Counsel of Record or any other outside counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or other
3 legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
5 Action but are retained to represent or advise a party to this Action and have appeared in
6 this Action on behalf of that party or are affiliated with a law firm which has appeared on
7 behalf of that party, and includes support staff.

8 2.11 Party: any party to this Action, including all of its officers, directors, employees,
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support services
13 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
14 organizing, storing, or retrieving data in any form or medium) and their employees and
15 subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL.” The Parties agree that designation should be limited to matters
18 regarding deputies’ personnel files, internal affairs investigations, and information
19 pertaining to the privacy rights of third parties.

20 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
21 Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected
24 Material (as defined above), but also (1) any information copied or extracted from
25 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
26 Material; and (3) any testimony, conversations, or presentations by Parties or their
27 Counsel that might reveal Protected Material.

28 Any use of Protected Material at trial shall be governed by the orders of the trial judge.

1 This Order does not govern the use of Protected Material at trial.

2 **4. DURATION**

3 Even after final disposition of this litigation, the confidentiality obligations imposed by
4 this Order shall remain in effect until a Designating Party agrees otherwise in writing or
5 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
6 dismissal of all claims and defenses in this Action, with or without prejudice; and (2)
7 final judgment herein after the completion and exhaustion of all appeals, rehearings,
8 remands, trials, or reviews of this Action, including the time limits for filing any motions
9 or applications for extension of time pursuant to applicable law.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
12 Non-Party that designates information or items for protection under this Order must take
13 care to limit any such designation to specific material that qualifies under the appropriate
14 standards. The Designating Party must designate for protection only those parts of
15 material, documents, items, or oral or written communications that qualify so that other
16 portions of the material, documents, items, or communications for which protection is
17 not warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
19 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
20 unnecessarily encumber the case development process or to impose unnecessary
21 expenses and burdens on other parties) may expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated
23 for protection do not qualify for protection, that Designating Party must promptly notify
24 all other Parties that it is withdrawing the inapplicable designation.

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order
26 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
27 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
28 must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the
4 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
5 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
6 portion or portions of the material on a page qualifies for protection, the Producing Party
7 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
8 in the margins).

9 A Party or Non-Party that makes original documents available for inspection need not
10 designate them for protection until after the inspecting Party has indicated which
11 documents it would like copied and produced. During the inspection and before the
12 designation, all of the material made available for inspection shall be deemed
13 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
14 copied and produced, the Producing Party must determine which documents, or portions
15 thereof, qualify for protection under this Order. Then, before producing the specified
16 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
17 that contains Protected Material. If only a portion or portions of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the protected
19 portion(s) (e.g., by making appropriate markings in the margins).

20 (b) for testimony given in depositions that the Designating Party identify the
21 Disclosure or Discovery Material on the record, before the close of the deposition all
22 protected testimony.

23 (c) for information produced in some form other than documentary and
24 for any other tangible items, that the Producing Party affix in a prominent place on the
25 exterior of the container or containers in which the information is stored the legend
26 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
27 the Producing Party, to the extent practicable, shall identify the protected portion(s).

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to

1 designate qualified information or items does not, standing alone, waive the Designating
2 Party's right to secure protection under this Order for such material. Upon timely
3 correction of a designation, the Receiving Party must make reasonable efforts to assure
4 that the material is treated in accordance with the provisions of this Order.

5

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time that is consistent with the Court's Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
10 process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
13 to harass or impose unnecessary expenses and burdens on other parties) may expose the
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
15 the confidentiality designation, all parties shall continue to afford the material in
16 question the level of protection to which it is entitled under the Producing Party's
17 designation until the Court rules on the challenge.

18

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
21 produced by another Party or by a Non-Party in connection with this Action only for
22 prosecuting, defending, or attempting to settle this Action. Such Protected Material may
23 be disclosed only to the categories of persons and under the conditions described in this
24 Order. When the Action has been terminated, a Receiving Party must comply with the
25 provisions of section 13 below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location and
27 in a secure manner that ensures that access is limited to the persons authorized under this
28 Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to
6 disclose the information for this Action;

7 (b) the officers, directors, and employees (including House Counsel) of
8 the Receiving Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
10 reasonably necessary for this Action and who have signed the “Acknowledgment and
11 Agreement to Be Bound” (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
15 whom disclosure is reasonably necessary for this Action and who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (g) the author or recipient of a document containing the information or a custodian or
18 other person who otherwise possessed or knew the information;

19 (h) during their depositions, witnesses ,and attorneys for witnesses, in the Action to
20 whom disclosure is reasonably necessary provided: (1) the deposing party requests that
21 the witness sign the form attached hereto; and (2) they will not be permitted to keep any
22 confidential information unless they sign the “Acknowledgment and Agreement to Be
23 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
24 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
25 Protected Material may be separately bound by the court reporter and may not be
26 disclosed to anyone except as permitted under this Stipulated Protective Order; and

27 (i) any mediator or settlement officer, and their supporting personnel,
28 mutually agreed upon by any of the parties engaged in settlement discussions.

1

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN

3 OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation that

5 compels disclosure of any information or items designated in this Action as

6 “CONFIDENTIAL,” that Party must:

7 (a) notify in writing the Designating Party within three calendar days of receipt of the

8 subpoena or court order. Such notification shall include a copy of the subpoena or court

9 order;

10 (b) promptly notify in writing the party who caused the subpoena or order to issue in

11 the other litigation that some or all of the material covered by the subpoena or order is

12 subject to this Protective Order. Such notification shall include a copy of this Stipulated

13 Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the

15 Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the

17 subpoena or court order shall not produce any information designated in this action as

18 “CONFIDENTIAL” before a determination by the court from which the subpoena or

19 order issued, unless the Party has obtained the Designating Party’s permission. The

20 Designating Party shall bear the burden and expense of seeking protection in that court

21 of its confidential material and nothing in these provisions should be construed as

22 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive

23 from another court.

24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO

25 BE PRODUCED IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-Party in

27 this Action and designated as “CONFIDENTIAL.” Such information produced by Non-

28 Parties in connection with this litigation is protected by the remedies and relief provided

1 by this Order. Nothing in these provisions should be construed as prohibiting a Non-
2 Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a
4 Non-Party's confidential information in its possession, and the Party is subject to an
5 agreement with the Non-Party not to produce the Non-Party's confidential information,
6 then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all
8 of the information requested is subject to a confidentiality agreement with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
10 this Action, the relevant discovery request(s), and a reasonably specific description of
11 the information requested; and

12 (3) make the information requested available for inspection by the Non-Party, if
13 requested.

14 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
15 receiving the notice and accompanying information, the Receiving Party may produce
16 the Non-Party's confidential information responsive to the discovery request. If the Non-
17 Party timely seeks a protective order, the Receiving Party shall not produce any
18 information in its possession or control that is subject to the confidentiality agreement
19 with the Non-Party before a determination by the court. Absent a court order to the
20 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
21 court of its Protected Material.

22

23 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
25 Material to any person or in any circumstance not authorized under this Stipulated
26 Protective Order, the Receiving Party must immediately (a) notify in writing the
27 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
28 unauthorized copies of the Protected Material, (c) inform the person or persons to whom

1 unauthorized disclosures were made of all the terms of this Order, and (d) request such
2 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
3 attached hereto as Exhibit A.

4

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of
9 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
10 This provision is not intended to modify whatever procedure may be established in an e-
11 discovery order that provides for production without prior privilege review. Pursuant to
12 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
13 effect of disclosure of a communication or information covered by the attorney-client
14 privilege or work product protection, the parties may incorporate their agreement in the
15 stipulated protective order submitted to the court.

16 **12. MISCELLANEOUS**

17 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to
18 seek its modification by the Court in the future.

19 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective
20 Order no Party waives any right it otherwise would have to object to disclosing or
21 producing any information or item on any ground not addressed in this Stipulated
22 Protective Order. Similarly, no Party waives any right to object on any ground to use in
23 evidence of any of the material covered by this Protective Order.

24 **12.3 Filing Protected Material.** A Party that seeks to file any Protected Material must
25 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
26 pursuant to a court order authorizing the sealing of the specific Protected Material at
27 issue. If a Party's request to file Protected Material under seal is denied by the court, then
28 the Receiving Party may file the information in the public record unless otherwise

1 instructed by the court.
2

3 **13. FINAL DISPOSITION**

4 After the final disposition of this Action, as defined in paragraph 4, within 60 days of a
5 written request by the Designating Party, each Receiving Party must return all Protected
6 Material to the Producing Party or destroy such material. As used in this subdivision, “all
7 Protected Material” includes all copies, abstracts, compilations, summaries, and any
8 other format reproducing or capturing any of the Protected Material. Whether the
9 Protected Material is returned or destroyed, the Receiving Party must submit a written
10 certification to the Producing Party (and, if not the same person or entity, to the
11 Designating Party) by the 60 day deadline that (1) identifies (by category, where
12 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
13 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
14 any other format reproducing or capturing any of the Protected Material.

15 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
16 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
18 consultant and expert work product, even if such materials contain Protected Material.
19 Any such archival copies that contain or constitute Protected Material remain subject to
20 this Protective Order as set forth in Section 4 (DURATION).

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2 14. Any violation of this Order may be punished by any and all appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 DATED: June 20, 2019 MORRIS LAW FIRM
7

8 By: /s/Danielle R. Pena
9 Christopher S. Morris
Danielle R. Pena
10 Attorneys for Plaintiff

11 DATED: June 25, 2019 MICHELLE D. BLAKEMORE
12 County Counsel
13

14 By: /s/Shannon L. Gustafson
15 Shannon L. Gustafson
16 Deputy County Counsel
17 Attorneys for Defendants

18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
19

20 DATED: June 25, 2019

21 

22 _____
23 Sheri Pym
24 United States Magistrate Judge
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of _____ [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint

_____ [print or type full name] of

[print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: _____